

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

CHRISTOPHER C. LUKE

PLAINTIFF

VS.

CIVIL ACTION NO.:
3:14cv240 DPJ-FKB

NESHOBA COUNTY, MISSISSIPPI; DEFENDANTS
SHERIFF TOMMY G. WADDELL, Individually
and in His Official Capacity;
JIMMY REID, NESHOBA COUNTY JAIL
ADMINISTRATOR, Individually and in
His Official Capacity; NICK WALKER,
JAILER, Individually and in His
Official Capacity; HARVEY HICKMAN,
JAILER, Individually and in His
Official Capacity; BILLY GUESS, JAILER,
Individually and in His Official Capacity;
JOSH BURT, DEPUTY, Individually and in His
Official Capacity; KEN SPEARS, CONSTABLE,
Individually and in His Official Capacity;
ANGEL CROCKETT, CORRECTIONS SUPERVISOR,
Individually and in Her Official Capacity;
and JOHN AND JANE DOES ONE THROUGH SIX

DEPOSITION OF MICKEY WALLACE, M.D.

Taken at Ear, Nose & Throat Surgical Group
970 Lakeland Drive, Suite 40,
Jackson, Mississippi,
on Friday, December 19, 2014,
beginning at approximately 10:47 a.m.

AMY M. KEY, RPR, CSR
Notary Public

EXHIBIT "M"

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1 directly resulted in his hearing loss that we're
2 discussing today?
3 MR. SMITH: Object to the form.
4 Leading.
5 THE WITNESS: I do have that opinion,
6 that that is the cause of his hearing loss.
7 BY MR. WALLER:
8 Q. I wanted to ask you this. There was
9 some -- he was injured on the 28th and taken to
10 Neshoba ER on the 30th and transferred to Jeff
11 Anderson on the same day.
12 The delay in treatment of two days, did
13 that have any impact on his permanent hearing loss
14 or his hearing loss?
15 MR. SMITH: Object to the form.
16 THE WITNESS: Probably not.
17 BY MR. WALLER:
18 Q. Once it was done --
19 A. Once it was done, it was probably done.
20 Q. So the timing of the treatment did not
21 have an impact on his level of hearing loss?
22 A. No. If he tore the hearing nerve, it's
23 torn.
24 Q. And his hearing loss in both ears is nerve
25 related?

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1 A. Yes.
2 Q. Do you expect his hearing in his right ear
3 to stabilize or deteriorate over time?
4 MR. SMITH: Object to the form. Calls
5 for speculation.
6 BY MR. WALLER:
7 Q. If you can give that opinion.
8 A. I would say it's fairly acutely traumatic,
9 so there was probably a 30 percent chance that it
10 could have improved over the next couple of months.
11 After that and then at that point, it would be
12 fairly stable. It would probably reach maximum
13 improvement within the next 60 days after that
14 trauma. And other than the normal wear and tear of
15 age-related changes, it would be subject to just
16 normal age-related deterioration.
17 Q. So you're talking about a healing period
18 of what, five to six months or?
19 A. Anything over 30 to 60 days is going to do
20 what it's going to do, and then it's just going to
21 be normal age-related and noise-trauma related
22 changes.
23 Q. The August 1st hearing test was
24 approximately 60 days after the injury. So are you
25 confident he had improved as much as he would have

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1 at that point?
2 A. I would be more comfortable to see him 60
3 days after that to say that.
4 Q. To retest him and see if he had any
5 improvement in his right ear?
6 A. Yes. It's likely he did not. But the
7 right thing to do would be to have another test.
8 And that one, the left one, there's probably less
9 than a one percent chance it could change, highly
10 unlikely, but the right one should be -- he would
11 need another one to go by.
12 Q. With his type of hearing loss, do you
13 think that would -- do you have an opinion whether
14 or not that would affect his employment, his ability
15 to gain employment?
16 MR. SMITH: Object to the form.
17 THE WITNESS: In my experience of doing
18 this over 30 years, people that have
19 reasonably normal hearing in one ear are as
20 equally employable as someone that has both
21 ears. As long as one ear is functioning,
22 they're employable as anyone else.
23 BY MR. WALLER:
24 Q. And it's your opinion that if he had the
25 hearing aid he would have reasonably normal hearing

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1 in that one ear?
2 A. Based on the information that I have at
3 this time, yes.
4 Q. Did you give a percentage in your letter
5 to the amount of hearing loss? I think you say --
6 A. That's a quagmire to try to give a
7 percentage, because there's, you know, the eyeball
8 test, what the hearing is to the test, and then
9 there's the voc-rehab formula which has nothing
10 really to do with that, so that's a hard -- that's
11 sort of an opinion. Because if you do much of the
12 vocational rehabilitation formula, my opinion of
13 that is that it's not really a great, valid formula,
14 but that's the one that's used. So to give a
15 percentage of hearing loss is somewhat of an
16 opinion.
17 Q. Well, can you give your opinion?
18 A. Having said that, looking at this form,
19 this 20 here, that's speech reception threshold.
20 That's how loud did they turn it up so that the
21 person can hear speech. That's sort of like
22 20 percent. And then this number over here, 80, is
23 where they read a two syllable word list of 20
24 words. And that 80 means he got 80 percent of the
25 words right on that test turning it up 20 decibels.

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1 That is very functional hearing.
2 So it's difficult to give -- based on that
3 test, it's hard to give a legal documentation of
4 what percentage of hearing loss he has. Part of
5 that reason is that ear on this test, his
6 frequencies are really low and some low frequencies
7 which are not very important for conversation. In
8 the middle range on this test, he hears pretty well,
9 which is a lot of conversation. And down here in
10 the high frequencies, that's more environmental
11 sounds. So it's hard to give a percentage that you
12 could swear somebody wouldn't argue with.

13 And if you use the voc-rehab numbers, they
14 only use the test at 500, 1,000 and 2,000 Hertz, for
15 the most part, when giving a percentage of hearing
16 loss. In my personal opinion, that's not a good
17 formula, but that's the one I used.

18 Q. So your opinion is he has 100 percent in
19 his left ear, and you don't have an opinion that
20 would give a percent of loss in the right ear?

21 A. I have an opinion but I don't have one
22 that I would be -- that you could --

23 Q. Well, just give us your opinion, for what
24 it's worth.

25 A. Based on that, I mean, he's got a

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1 30 percent hearing loss in that left ear, I would
2 just say, from my experience.

3 Q. You mean in his right ear?

4 A. In the right ear. But there's a lot of
5 different ways to figure that. That's just a --

6 Q. A guesstimate, if you will?

7 A. That's just a guesstimate of having done
8 this 30-plus years.

9 Q. Okay.

10 A. And I say that about the voc-rehab because
11 we did over 200 employees in a plant one time
12 looking for those issues, and then I tested about
13 150 of those firemen that did all that, had the
14 lawsuit for that. So I'm real familiar with that
15 voc-rehab formula. What the voc-rehab formula says
16 and what people really function is not, in my
17 opinion, accurate. That voc-rehab does not take
18 into account, you know, everything.

19 Q. You would have a higher --

20 A. I've done a lot of that.

21 Q. You would have a higher percentage of loss
22 in the voc-rehab formula?

23 A. Yes. Ear loss based on the voc-rehab
24 formula is not a real accurate or a real life
25 function. Having done over 350 of those, I have an

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1 opinion about that.

2 Q. Well, what is your prognosis for the right
3 ear? Under normal living conditions, will it
4 continue to deteriorate?

5 A. I wouldn't give you one based on a test
6 that's 18 months old.

7 Q. You would need to test him again is what
8 you're saying?

9 A. Someone would. The ultimate -- I mean
10 probably someone like Jim House, James House, is the
11 neuro-otologist here. He's sort of the gold
12 standard for that. He would be the best follow-up
13 for that.

14 Q. Is there any pain associated with this
15 hearing loss?

16 A. Or either Dr. Eby at University.

17 Q. Yeah.

18 A. No.

19 Q. Any headaches or any --

20 A. There's not pain or headaches associated
21 with this hearing issue.

22 Q. And you didn't test him for ringing or
23 anything like that, did you? Tinnitus or the
24 ringing in the ears, he didn't complain of that?

25 A. That's not a measurable quantity anyway.

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1 That's a subjective -- that's a fairly subjective
2 complaint.

3 Q. He didn't complain about --

4 A. I'm sure he did. I mean, it would be
5 unusual to not have that.

6 Q. Would the ringing be in the left ear or
7 the right ear?

8 A. Basically, the damage in the left ear
9 would usually be short limited. Usually within 60
10 days most of that would probably resolve. There
11 wouldn't be any noise over there, but with the right
12 ear he probably would have some residual tinnitus.

13 Q. Does that tinnitus get worse with time
14 typically?

15 A. 90 percent of people that have that it
16 gets worse with time gradually. But it's associated
17 with the degree of deterioration of hearing at the
18 high frequencies just associated with accumulation
19 of birthdays and noise exposure.

20 Q. Does it affect his balance, the hearing
21 loss?

22 A. With a temporal bone fracture, such as in
23 the left ear, those people are usually intensely
24 dizzy for 20 to 30 days and that resolves with a
25 fracture. They usually have a lot of dizziness the

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1 first 20 to 30 days and then that resolves itself.
 2 That trauma of the right ear, that's just
 3 a percentage. You know, maybe 30 percent of people
 4 would have some imbalance over there and two-thirds
 5 of them may have none, so that's unpredictable.
 6 MR. WALLER: That's all the questions I
 7 have.
 8 MR. SMITH: Dr. Wallace, I've got just a
 9 few follow-up, not very many.
 10 EXAMINATION
 11 BY MR. SMITH:
 12 Q. Just to make a point on a few things, the
 13 first time you saw him was July of 2013?
 14 A. Right.
 15 Q. And the last time -- you only saw him one
 16 other time, and that was August 1st, 2013?
 17 A. According to my records and my memory.
 18 Q. And you did not have any prior hearing
 19 tests to compare to what you observed on that date?
 20 A. No.
 21 Q. On the left ear, you said that was caused
 22 by a temporal joint fracture?
 23 A. Yes.
 24 Q. Where is that in the head?
 25 A. It's from about the hole -- the hole in

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1 the ear runs right through the middle of it and it
 2 goes maybe seven centimeters up into your skull.
 3 The base of your skull is where it is.
 4 Q. And as far as the facts of having the
 5 trauma he had or whether he got hit by another
 6 inmate or what, you don't have any personal
 7 knowledge of that? Anything you would know would be
 8 what you were told by him or the parents?
 9 A. That's correct.
 10 Q. And then the right ear -- well, in the
 11 left ear the hearing loss is caused by the nerve or
 12 the cochlear being damaged and that happened
 13 immediately?
 14 A. Correct.
 15 Q. And then the same for the right side, that
 16 was -- what was the cause of the right ear hearing
 17 loss, if you know?
 18 A. Trauma to the inner ear and the brain
 19 around that temporal bone area.
 20 Q. And if you have a blow to the right side
 21 of your head, would that be consistent with that
 22 type of a hearing loss?
 23 A. Yes. Based on his records, they said he
 24 had what we call a Battle's sign, B-A-T-T-L-E's, in
 25 the right postauricular area, which is the area

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1 behind the ear, and that's indicative of significant
 2 trauma to the temporal bone on that side. It's a
 3 bruise in that area.
 4 Q. Let me ask you to look in your records,
 5 and this is on the 8/1/2013 visit. You were asked
 6 some questions about tinnitus. Looking down here on
 7 review of symptoms, on ears, it says, "Hearing loss,
 8 no tinnitus." So he didn't have tinnitus?
 9 A. Well, it's not documented there, but
 10 whoever pushed -- you know, the medical records is
 11 kind of whoever pushed that particular button. I
 12 don't know if that came from a form that he filled
 13 out and the nurse transferred it to that or they
 14 just failed to mention it.
 15 Q. Well, are you saying -- I mean, I don't
 16 see anywhere in any record that he had tinnitus on
 17 either visit. You were asked a question and you
 18 said it's possible. And I'm just saying that based
 19 on your records there was no recording of tinnitus.
 20 A. There was no documentation of it.
 21 Q. All right. As far as the questions he was
 22 asking you about balance, you were giving opinions
 23 about people generally. You didn't have any -- he
 24 didn't ever complain to you about problems with
 25 balance in either of these two visits, did he?

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1 A. Not that I recall. In fact, on 7/17 we
 2 did say he had tinnitus on that one.
 3 Q. And he didn't have it on the next visit?
 4 A. It wasn't noted on that one.
 5 Q. You were asked an opinion about a hearing
 6 loss percentage and you reluctantly gave it because
 7 it's a moving -- I mean, it depends on a lot of
 8 factors?
 9 A. Yeah.
 10 Q. But with a hearing aid you said that you
 11 would expect that he would have reasonably normal
 12 hearing in the right ear?
 13 A. Based on --
 14 Q. Based on your testing of him back in --
 15 A. Based on that, yes.
 16 Q. With a hearing aid, his hearing loss in
 17 the right ear, even though he has it, the hearing
 18 aid makes up for a lot of that hearing loss. That's
 19 the purpose of a hearing aid, correct?
 20 A. Correct.
 21 Q. If someone is on some type of drugs, do
 22 any drugs cause hearing loss?
 23 A. There's not a lot of hearing loss
 24 associated with recreational use of drugs.
 25 Chemotherapy and cancer drugs are bad to cause it.

1 But as far as recreational drugs, there's not a
 2 pattern of that.
 3 MR. SMITH: That's all I have,
 4 Dr. Wallace. Thank you.
 5 MR. WALLER: I don't have any further
 6 questions.
 7 (EXHIBIT NO. 5 MARKED.)
 8 (CONCLUDED AT 11:36 A.M.)

1 CERTIFICATE OF COURT REPORTER
 2 I, Amy M. Key, CSR, and Notary Public in
 3 and for the County of Lamar, State of Mississippi,
 4 hereby certify that the foregoing pages, under
 5 penalty of perjury, contain a true and correct
 6 transcript of the testimony of the witness, as
 7 taken by me at the time and place heretofore
 8 stated, and later reduced to typewritten form by
 9 computer-aided transcription under my supervision
 10 and to the best of my skill and ability.
 11 I further certify that I placed the witness
 12 under oath to truthfully answer the questions in
 13 this matter under the power vested in me by the
 14 State of Mississippi.
 15 I further certify that I am not in the employ
 16 of or related to any counsel or party in this
 17 matter, and have no interest, monetary or
 18 otherwise, in the final outcome of the
 19 proceedings.
 20 Witness my signature and seal this the 7th
 21 day of January, 2015.
 22
 23
 24 AMY M. KEY, CSR
 My Commission Expires June 19, 2016
 25